

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHN BOREMAN,

Plaintiff,

v.

Civil Action No. 5:07CV155  
(STAMP)

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER  
DENYING DEFENDANT'S MOTION IN LIMINE  
(TRACEY BOREMAN TESTIMONY)

Pending before this Court is defendant's motion in limine (Tracey Boreman testimony) (Doc. 51) filed on February 19, 2009. Defendant requests that this Court determine that the testimony of Tracey Boreman, daughter of plaintiff John Boreman, concerning her observations of the lobby of the McMechen, West Virginia Post Office on the morning of Mr. Boreman's fall on December 14, 2004, is not admissible. Defendant contends that Ms. Boreman's testimony is irrelevant because of the passage of time and intervening activity between the time that she was at the Post Office and the time of her father's fall. Defendant states that Ms. Boreman's observations of the Post Office lobby on the morning of December 14 are not relevant since plaintiff Boreman entered the Post Office and fell hours after she made her initial observations.

Plaintiff responded to defendant's motion in limine (Doc. 59) asserting that such testimony is relevant and admissible. Plaintiff contends, therefore, that the motion in limine should be denied. In addition to asserting that such testimony is relevant,

plaintiff contends that if Tracey Boreman would be prohibited from testifying about the floor condition during the morning hours before Mr. Boreman fell in the afternoon, then the individual contract person, Nancy Pickens, who cleaned the floor prior to the accident, should also be prohibited.

At the trial of this case conducted on March 24, 2009, this Court admitted both the testimony of Tracey Boreman and Nancy Pickens, finding that the testimony of both witnesses was relevant under Federal Rule of Evidence 401 and was not outweighed by the considerations under Federal Rule of Evidence 403.

Accordingly, defendant's motion in limine (Tracey Boreman testimony) is hereby DENIED.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: September 24, 2009

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE